

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXX

Petitioner

File No. 87070-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
This 26th day of February 2007
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On January 7, 2008, XXXX, authorized representative of her daughter XXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on January 11, 2008.

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on January 28, 2007.

II

FACTUAL BACKGROUND

The Petitioner is enrolled in her Blue Cross Blue Shield of Michigan (BCBSM) coverage through the Michigan Education Special Services Association (MESSA). Her coverage document is the MESSA Choices II benefit booklet.

On March 29, 2007, the Petitioner received a meniscal allograft transplantation (procedure code 29868) to repair her left knee. BCBSM denied both professional and facility charges for this procedure.

BCBSM denied coverage for the procedure because it considers it experimental and therefore a nonpayable service. The Petitioner appealed BCBSM's denial through the internal grievance process. After a managerial-level conference on October 29, 2007, BCBSM did not change its decision and issued a final adverse determination dated November 12, 2008.

III ISSUE

Did BCBSM properly deny coverage for the Petitioner's meniscal allograft transplantation?

IV ANALYSIS

Petitioner's Argument

BCBSM denied coverage for the Petitioner's meniscal transplantation surgery because they believe it is experimental, but the Petitioner argues that the Current Procedural Terminology book shows that code 29868 is a covered benefit. The Petitioner, therefore, believes this surgery should be covered, that it is safe and standard care for her condition. She says that her surgery was not only medically necessary but 100% successful.

The Petitioner had ligament transplant surgery on December 28, 2006, and it was covered by BCBSM. She wants BCBSM to pay for her March 29, 2007 surgery which was also medically necessary.

The Petitioner provided information on other insurance carriers that also pay for meniscal transplant surgery and do not consider it to be experimental.

BCBSM's Argument

Under the provisions of the Petitioner's coverage, BCBSM does not pay for experimental treatment or services related to experimental treatment. BCBSM's medical director reviewed the

documentation in this case and concluded that the meniscal allograft transplantation surgery that was provided is investigational for the Petitioner's diagnosis and is nonpayable.

BCBSM says that meniscal allograft transplantation has not been scientifically demonstrated to be as safe and effective as conventional treatment. Therefore, it meets the definition of "investigational" and is not covered.

Commissioner's Review

The Petitioner's benefit booklet sets forth the benefits that are covered and lists services that are not covered. In *Section 10: Exclusions and Limitations*, it lists as excluded:

- services and supplies that are not medically necessary according to accepted standards of medical practice including any services which are experimental or investigational

Also, the booklet, defines "experimental or investigational" as:

A service that has not been scientifically demonstrated to be as safe and effective for treatment of the patient's condition as conventional treatment.

The question of whether the Petitioner's meniscal allograft transplantation is considered investigational or experimental in nature was presented to an IRO for analysis as required by section

11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer is board certified in orthopedic surgery and has performed knee surgeries for 31 years.

The IRO reviewer said that based on his education, training, and experience meniscal allograft transplantation is no longer experimental or investigational. The reviewer cited AM Bhosale, MD, who reported in July 2007: "Allogeneic Meniscal Transplantation gives good symptomatic relief in meniscus deficient knees, with a success rate of 89%." The IRO reviewer further commented that the meniscal allograft transplant procedure performed in this case is an accepted orthopedic procedure in a young patient such as in this case (the Petitioner was 22 years old at the time of the surgery), with previous complete meniscectomy and no evidence of knee mal-

alignment, ligament instability, and minimal or no osteoarthritis.

The IRO reviewer concluded that the meniscal transplant on March 29, 2007, was reasonable, medically necessary, and not experimental or investigational for the Petitioner.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the conclusion of the IRO and finds that the Petitioner's meniscal allograft transplantation is neither investigational nor experimental and therefore is a covered benefit under the terms of her health coverage.

V ORDER

Respondent BCBSM's November 12, 2007, final adverse determination is reversed. BCBSM is required to cover the Petitioner's March 29, 2007, meniscal allograft transplantation within 60 days from the date of this Order, and shall provide the Commissioner with proof it has complied with this Order within seven days of compliance.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.